



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

REHEARING DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed August 07, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on November 17, 2015, at Milwaukee, Wisconsin. This matter was heard on rehearing after petitioner failed to appear for the initially scheduled hearing date of 9/30/15. Petitioner requested a rehearing on the basis that she was first delayed in traffic and was late and then had not been permitted into the building by security.

The issue for determination is whether the request is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: [REDACTED]

Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. In Case No. CCO/[REDACTED] (January 31, 2014), ALJ Maloney found that petitioner was liable for a CC overpayment in the amount of \$16,555.20.
3. Dunning notices were mailed to petitioner on 3/4/14, 4/2/14, and 5/2/14.
4. The Department issued a tax intercept notice to petitioner on 5/15/15 for the amount of \$16,555.20.
5. Petitioner filed a request for hearing on August 10, 2015.

DISCUSSION

The Department of Children and Families is required to recover all overpayments of public assistance benefits, including child care payments. Wis. Stat., §§49.195(3), 49.155. Wis. Stat., §49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayments of general relief benefits, food stamps, W-2 benefits including child care, and Medical Assistance.

The Department must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at §49.85(3).

The hearing right is described in Wis. Stat., §49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing *to exclude issues* that were presented at a prior hearing or *that could have been presented at a prior opportunity for hearing*.

Italics added. Petitioner was notified of the original overpayment by notice in 2013. Petitioner requested a hearing which she rescheduled twice. Petitioner then failed to appear for the hearing and requested a rehearing which ALJ Maloney granted. ALJ Maloney heard the evidence January 14, 2014. ALJ Maloney ruled against petitioner and upheld the claims of overpayment in DHA case number CCO/[REDACTED]. Petitioner did not appeal ALJ Maloney's decision.

Petitioner did not pay the debt. The agency issued a tax intercept dated 5/15/15 as a means of collecting the debt. Petitioner filed her request for hearing by letter postmarked August 7, 2015. The request would have had to have been mailed by June 15 in order to be a timely request. The request was, thus, untimely. Petitioner explained that she did not get the notice until June 28 when the letter and hearing form were dated. She stated that she immediately mailed the request but that the post office must have delayed the actual delivery of the letter until August 7, 2015. This is not believable especially due to the petitioner's pattern of lateness and failure to appear.

Regardless, it was apparent that petitioner simply wanted a do-over of the merits of the overpayment case. That matter was already decided by ALJ Maloney in a prior case and will not be revisited. The petitioner concedes and the evidence supports that this is the same person as was found liable in the previous case, and that the debt has not yet been paid. The tax intercept is proper.

Petitioner testified that she did not know about the overpayment until the tax intercept because her mother, who lived at the same address, did not give her the mail. There simply is no way to verify that claim. The notice and subsequent dunning notices were sent to petitioner's mailing address and were not returned by the postal service. I conclude that any attempt to appeal the actual overpayment is untimely, and thus the PACU may utilize the tax intercept to recover the overpayment.



CONCLUSIONS OF LAW

The appeal is not timely and the Department properly issued the tax intercept.

THEREFORE, it is **ORDERED**

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 19th day of November, 2015

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 19, 2015.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit